IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

CRP.No. 1295 of 2001(I)

TLB.(B)1/1997 of TALUK LAND BOARD, VADAGARA

REVN. PETITIONER:

STATE OF KERALA

BY GOVERNMENT PLEADER SRI.DILEEP

RESPONDENT:

PULIYANGATTU KRISHNAN MASTER,
S/O.RAMAN, PALOTHUKULANGARA
ADUKATH DESOM, MARUTHOMKARA VILLAGE,
VADAKARA.

BY ADV. SRI.C.D.SHAJU
SRI.P.M.MUHAMMED RAHAZ

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P. NO. 1295 OF 2001

Dated this the 20th November, 2007

O R D E R

The State has filed this Civil Revision Petition challenging the order dated 5.2.2000, passed by the Taluk Land Board, Vadakara in the proceedings under Section 87 of the Kerala Land Reforms Act (hereinafter referred to as 'the Act'). As on 1.1.1970, the respondent was an adult unmarried person. He married Sobhana on 1.6.1974. Three children were born in that wedlock on 31.5.1980, 30.5.1984 and the last one thereafter. As per document No.271/89, the respondent acquired certain items of properties. Proceedings were initiated on the basis that as on 1.1.1970 the respondent was an adult unmarried person and, therefore, he could not hold more than 7.50 acres of land.

2. As per the draft statement, the relevant date for determining the ceiling area was stated to be 1.1.1970 and on that basis it was stated that the respondent was liable to surrender 7.98 acres.

3. The respondent contended that though he was unmarried as on 1.1.1970, by his marriage a statutory family is constituted, which could hold more extent of land than the extent of land which could be held by an adult unmarried person. The Taluk Land Board considered the objections raised by the respondent and held that the family of the respondent could hold ten standard acres of land subject to a maximum of 15 ordinary

acres. Including the acquisition made after 1.1.1970, the respondent was found to be in possession of less than the ceiling limit for the statutory family. Thus the Taluk Land Board came to the conclusion that the respondent is not holding any excess land and he is not liable to surrender any land, which is challenged by the State in this Civil Revision Petition.

4. Learned Government Pleader submitted that the state of affairs as on 1.1.1970 alone is relevant and any subsequent increase or decrease in the number of members in the statutory family would not alter the ceiling area under the Act. He relied on the Division Bench decision in **Kurian** v. **Taluk Land Board** (1991 (1) KLT 162) and the decision in **Raghunath Laxman Wani** v. **State of Maharashtra** (AIR 1971 SC 2137) in support of his contention. Learned Government Pleader also submitted that the Division Bench has overruled the decision of a learned single Judge in **M.T.John** v. **Taluk Land Board, Quilandy** (1976 KLT Short Note 59). Learned counsel appearing for the respondent submitted that in paragraph 13 of the decision in **Kurian** v. **Taluk Land Board**, the Division Bench has expressly stated that the decision is restricted to cases where statutory families existing as on 1.1.1970 undergo change in composition on account of subsequent birth, death or minor members attaining majority. It is also stated therein thus:

> "It is unnecessary for us to consider in this case the position where an adult unmarried person becomes family by marriage."

5. In **Kurian** v. **Taluk Land Board** (1991 (1) KLT 162), the Taluk Land Board held as per the order dated 24.2.1983 that the family had 15.43 acres of land equivalent to 11.49 standard acres as on 1.1.1970 and the family did not own or possess land in excess of the ceiling area. The proceedings were accordingly dropped. Fresh proceedings were initiated under Section 87 of the Kerala Land Reforms Act. There was an acquisition of the property in 1974. Just before the acquisition in 1974 two of the minor children, who were members of the family, attained majority and one of the minor children died. The Taluk Land Board took into account the number of members of the statutory family as on the date of the subsequent acquisition and fixed the maximum extent of land that could be held by the statutory family. The declarant was directed to surrender the excess land on that basis. That order was under challenge in the Revision. The Division Bench held thus:

> "... Therefore, it is clear that ceiling area prescribed in S.82 in respect of a family cannot increase or decrease subsequently merely on account of increase or decrease in the number of members of the family either by birth or by death or by minor members attaining majority. Ceiling area so far as a family is concerned is to be determined as on the notified date namely 1.1.1970 and it cannot undergo any fluctuation merely on account of change in the number of members of the family. To hold otherwise would detract the plain tenor of the provisions and amount to making an addition to the provisions of the Act."

6. In **Raghunath Laxman Wani and others** v. **The State of Maharashtra and others** (AIR 1971 SC 2137), which arose under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, it was held that the ceiling area had to be determined with reference to the state of affairs of a person on the appointed day, ie. 26.1.1962. Out of the 14 members of the family, as three of them had been born after January 26, 1962, the appointed day, they could not be treated as members of the family under Section 6 of the Act for the purpose of the additional 1/6th of the basic ceiling area. The question which had arisen was whether the ceiling area so fixed would be liable to fluctuation with the subsequent increase or decrease in the number of members. In that context the Supreme Court held thus:

> "17. The scheme of the Act seems to be to determine the ceiling area of each person (including a family) with reference to the appointed day. The policy of the Act appears to be that on and after the appointed day no person in the State should be permitted to hold any land in excess of the ceiling area as determined under the Act and that ceiling area would be that which is determined as on the appointed day. Therefore, if there is a family consisting of persons exceeding five in number on January 26, 1962, the ceiling area for that family would be the basic ceiling area plus 1/6th thereof per member in excess of the number five. The ceiling area so fixed would not be liable to fluctuations with the subsequent increase or decrease in the number of its members, for, there is, apart from the explicit language of Ss.3 and 4 no provision in the Act providing for the redetermination of the ceiling area of a family on variations in the number of its members. The argument that every addition or reduction in the number of the members of a family requires redetermination of the ceiling area of such a

> family would mean and almost perpetual fixation and re-fixation in the ceiling area by the Revenue authorities, a state of affairs hardly to have been contemplated by the legislature. The argument would also mean that where a surplus area is already determined and allotted to the landless persons such area would have to be taken back and given to a family, the number of whose members subsequently has augmented by fresh births.""

7. In **Kurian** v. **Taluk Land Board** (1991(1) KLT 162) and in **Raghunath Laxman Wani and others** v. **The State of Maharashtra and others** (AIR 1971 SC 2137), the question considered was whether increase or decrease in the number of members of the family after the appointed day would have impact on the ceiling area applicable to the family. In *Kurian's* case there was subsequent acquisition and reduction in the number of members in the statutory family. It was in that context, the Division Bench held that increase or decrease in the number of members of the family would not affect the ceiling area which is to be fixed with reference to 1.1.1970. In AIR 1971 SC 2137, there was increase in the number of members and the Supreme Court held that it would have no impact on the ceiling area which should be fixed with reference to the appointed day. In both these cases, there was no question of an adult unmarried person subsequently constituting a statutory family by marriage after the appointed day. The discussion in the Supreme Court judgment would indicate that increase in the number of members in the statutory family could not be a ground for resuming lands which have already been assigned.

8. In **M.T.John** v. **Taluk Land Board, Quilandy** (1976 KLT Short Note 59 Case No.131), the adult unmarried person as on 1.1.1970 was holding lands less than the ceiling area after excluding the exempted category of land. On 25.11.1970, he acquired lands. He married on 30.9.1972 and subsequently purchased other items of properties. In that context, it was held thus:

> "When an adult unmarried person gets married, he is no longer an adult unmarried person, but is a member of a family. For the purpose of S.85(1) that makes no difference for the surrender of excess land. But subsequent to 1-1-1970 any minor becoming a major, remaining unmarried or an adult unmarried person marrying and becoming a member of a family are all matters which may have relevance in considering the land liable to be surrendered under S.87. If any person comes to hold or own land or possess under a mortgage land in excess of the ceiling limit at any time after the notified day such person is under obligation to surrender the excess land by virtue of the provisions in S.87. Such liability is that of the person who comes to own excess land. When the question is one of surrender under S.87, the ceiling area is to be determined for such purpose taking into account the status of the person on the date the holding exceeds the ceiling limit."

In *Kurian's case,* the Division Bench stated that the decision of the Supreme Court in AIR 1971 SC 2137 was not brought to the notice of the learned Judge who decided *M.T.John's case*. The Division Bench in *Kurian's case*, with reference to M.T.John's case, also held as follows:

> ".. Further the case did not relate to fluctuation in the number of members of a family subsequent to 1-1-1970 but related to change of status of an adult unmarried person as a member of the family. If the decision is to be understood as one laying down the proposition that fluctuation in the number of members of the family as it existed on the date of

> acquisition has to be taken into consideration for re-determining the ceiling area for the purpose of S.87, with great respect, we are unable to agree with such a view as it is not in consonance with the provisions of the Act and contrary to the dictum laid down by the Supreme Court."

9. The decision in M.T.John's case was not overruled by the Division Bench. More over, the Division Bench in Kurian's case specifically excluded the cases were adult unmarried person becomes family by marriage.

10. Section 2(1) of the Act defines "adult unmarried person". "Adult unmarried person" means an unmarried person who has attained eighteen years of age. As per Section 2(3), "ceiling area" means the extent of land specified in Section 82 as the ceiling area. As per Section 82, the "ceiling area" in the case of an adult unmarried person or a family consisting of a sole surviving member shall be five standard acres, so however, the ceiling area shall not be less than six and more than seven and a half acres in extent. Section 2(14) defines "family" thus:

> "Family" means husband, wife and their unmarried minor children or such of them as exist. "

As per Section 82 of the Act, a family consisting of two or more, but not more than five members can hold ten standard acres, so however, that the ceiling area shall not be less than twelve and more than fifteen acres in extent. Section 82(c) provides that in the case of a family consisting of

more than five members, it can hold ten standard acres increased by one standard acre for each member in excess of five, so however, that the ceiling area shall not be less than twelve and more than twenty acres in extent. Sub-section (2) of Section 82 provides that for the purposes of Chapter III, all the lands owned or held individually by the members of a family or jointly by some or all of the members of such family shall be deemed to be owned or held by the family. In calculating the extent of land owned or held by a family or an adult unmarried person, sub-section (3) of Section 82 provides for taking into account the share held by a member or members of the family or adult unmarried person jointly with other persons. Sub-section (4) of Section 82 provides for ignoring conversion of any class of land in Schedule II to any other class of land in that Schedule after the commencement of the Act. Explanation II to Section 82 provides that for the purposes of the said Section, an adult unmarried person shall include a divorced husband or divorced wife who has not remarried.

11. Section 83 provides that with effect from such date as may be notified by the Government in the Gazette, no person shall be entitled to own or hold or to possess under a mortgage lands in the aggregate in excess of the ceiling area. The notified date is 1.1.1970. Even after the ceiling area is fixed, as per Section 83, a person or statutory family cannot hold land in excess of the ceiling area at any point of time

thereafter. If there is any subsequent acquisition by an adult unmarried person or the statutory family, Section 87 comes into operation. Section 87 reads as follows:

> "**87. Excess land obtained by gift, etc., to be surrendered:**-- (1) Where any person acquires any land after the date notified under Section 83 by gift, purchase, mortgage with possession, lease, surrender or any other kind of transfer *inter vivos* or by bequest or inheritance or otherwise and in consequence thereof the total extent of land owned or held by such person exceeds the ceiling area, such excess shall be surrendered to such authority as may be prescribed.
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> **Explanation I**:-- Where any land is exempted by or under Section 81 and such exemption is in force on the date notified under Section 83, such land shall, with effect from the date on which it ceases to be exempted, be deemed to be land acquired after the date notified under Section 83.
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> **Explanation II**:-- Where, after the date notified under Section 83, any class of land specified in Schedule II has been converted into any other class of land specified in that Schedule or any land exempt under Section 81 from the provisions of this Chapter is converted into any class of land not so exempt and in consequence thereof the total extent of land owned or held by a person exceeds the ceiling area, so much extent of land as is in excess of the ceiling area, shall be deemed to be land acquired after the said date.
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> (1A) Any person referred to in sub-section (1) shall file a statement containing the particulars specified in sub-section (1) of Section 85A within a period of three months of the date of the acquisition.
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> (2) The provisions of Sections 85 and 86 shall, so far as may be, apply to the vesting in the Government of the ownership or possession or both of the lands required to be surrendered under sub -section (1)."

12. The term "person" is defined in Section 2(43) as follows:

> "(43) "person" shall include a company, family, joint family, association or other body of individuals, whether incorporated or not, and any institution capable of holding property;"

What Section 87 provides is that when an adult unmarried person or a statutory family or a 'person' acquires land after 1.1.1970 and by such acquisition, it exceeds the ceiling area, such excess shall be surrendered. Power is vested with the Board to reopen the case, if a case was already decided, or to initiate proceedings under Section 87 for taking the land as excess land in excess of the ceiling limit. Section 87 also takes note of the conversion of land from one category to another category or conversion of any class of land which is exempted into a category which is not exempted. Section 87 is not attracted when an adult unmarried person marries and constitutes a statutory family so long as such statutory family does not hold lands in excess of the extent which could be held by a statutory family. It does not stand to reason that a minor who was a member of the statutory family and who got only a nominal share on partition of the family properties, would not thereafter be entitled to acquire any extent of land on his attaining majority or after his marriage, only because of the fact that he was a member of the statutory family as on 1.1.1970. That is not the purpose of the ceiling provisions in the Land Reforms Act and Section 83 of the Act. The purpose is that a person or a family cannot hold land in excess of the ceiling area even after 1.1.1970. That does not mean that an adult unmarried person as on

1.1.1970 cannot thereafter constitute a statutory family and hold land which a statutory family could legally hold and possess. It cannot be assumed that the ceiling provisions in the Kerala Land Reforms Act draw a distinction between the persons who married before 1970 and persons who married after 1970. Such a distinction or classification is not made under the Act. Therefore, the Taluk Land Board was perfectly justified in holding that the respondent could hold land in excess of the land which could be held by an adult unmarried person and that he could hold that much extent of land which could be held by a statutory family. No other point is raised by the revision petitioner. The impugned order does not call for any interference.

The Civil Revision Petition is, accordingly, dismissed.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

C.R.P.NO. 1295 OF 2001

O R D E R

20th November, 2007